



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220110-0008]

RIN 0648-BK77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 53

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf) (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 53). This proposed rule and Amendment 53 would modify the allocation of Gulf red grouper catch between the commercial and recreational sectors as well as revise sector annual catch limits (ACLs) and annual catch targets (ACTs). The purposes of this proposed rule and Amendment 53 are to revise the red grouper sector allocations using the best scientific information available and to modify the allowable harvest of red grouper based on results of the recent stock assessment.

DATES: Written comments must be received by [insert date 30 days after date of publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2021-0098" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter "NOAA-NMFS-2021-0098" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 53, which includes an

environmental assessment, a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, and electronic copies of a minority report submitted by four Council members, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-53-red-grouper-allocations-and-catch-levels>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: peter.hood@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes red grouper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Unless otherwise noted, all weights in this proposed

rule are in gutted weight.

Red grouper in the Gulf exclusive economic zone (EEZ) are found primarily in the eastern Gulf on offshore hard bottom areas and are managed as a single stock with commercial and recreational ACLs and ACTs. The allocation of the ACL between the commercial and recreational sectors is currently 76 percent commercial and 24 percent recreational and was set through Amendment 30B to the FMP in 2009 (74 FR 17603; April 16, 2009).

Commercial red grouper fishing is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program, which began January 1, 2010 through Amendment 29 to the FMP (74 FR 44732; August 31, 2009, and 75 FR 9116; March 1, 2010). Under the IFQ program, the commercial red grouper quota is based on the commercial sector's red grouper ACT (commercial quota), and red grouper allocation is distributed on January 1 of each year to those who hold red grouper shares. Both red grouper and gag, another grouper species managed under the IFQ program, have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and vice versa. The multi-use provision is based on the difference between the respective ACLs and ACTs.

The recreational red grouper harvest is managed with catch limits, in-season and post-season accountability measures (AMs), season and area closures, a minimum size

limit, and a recreational bag limit. The in-season AM for red grouper requires NMFS to close the recreational sector for the remainder of the fishing year when red grouper landings reach or are projected to reach the recreational ACL. If recreational landings exceed the red grouper recreational ACL in a fishing year, the post-season AM requires NMFS to shorten the length of the following recreational fishing season by the amount necessary to ensure landings do not exceed the recreational ACT. If the red grouper stock is overfished, NMFS must also reduce the ACL and ACT by the amount of the recreational ACL overage in the prior year. The recreational red grouper AMs were implemented in 2012 (77 FR 6988; February 10, 2012) and were modified in 2013 (78 FR 6218; January 30, 2013).

In 2018, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. This recommendation was based on an interim analysis conducted by the Southeast Fisheries Science Center (SEFSC). The Council also heard concerns from fishermen about the condition of the red grouper stock because commercial and recreational harvests were well below the respective quota and ACL. The SSC did not feel comfortable recommending a new acceptable biological catch based on the analysis but determined that the analysis did support recommending that the Council

reduce the 2019 total ACL from 10.70 million lb (4.85 million kg) to 4.60 million lb (2.09 million kg). The Council noted the severe red tide conditions that occurred in the summer and fall of 2018 off the Florida west coast and decided to further reduce the total ACL to an amount equivalent to the 2017 harvest of 4.16 million lb (1.89 million kg). The Council took action by initially requesting an emergency rule to reduce red grouper ACLs and ACTs (84 FR 22389, May 17, 2019), and then making the harvest reductions permanent in a subsequent framework action (84 FR 52036; October 1, 2019).

The Southeast Data, Assessment, and Review (SEDAR) 61 assessment was completed in September 2019, and used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP-FES are generally higher than both the MRFSS and MRIP CHTS estimates. For example, the current red grouper total ACL and recreational ACL in MRIP CHTS units are 4.16

million lb (1.89 million kg) and 1.00 million lb (0.45 million kg), respectively. In MRIP-FES units, that red grouper total ACL and recreational ACL would be an estimated 5.26 million lb (2.39 million kg) and 2.10 million lb (0.95 million kg), respectively. This difference is because MRIP-FES is designed to more accurately measure fishing activity, not because there was a sudden rise in fishing effort.

NMFS developed calibrations models to adjust historic effort estimates so that they can be compared to new estimates from MRIP-FES. The calibration methodologies are discussed in Section 1.1 of Amendment 53 as well as in the SEDAR 61 final report. In response to comments on the integrated draft environmental impact statement, NMFS added information to Section 1.1 and included links to the calibration peer reviews. However, this peer review information has been publicly available since the reviews were completed in 2017 and 2018. In addition, a publication titled "Survey Design and Statistical Methods for Estimation of Recreational Fisheries Catch and Effort" has been available since 2018, and can be found at <https://media.fisheries.noaa.gov/2021-09/MRIP-Survey-Design-and-Statistical-Methods-2021-09-15.pdf>. This publication explains the different recreational fishing surveys and the time-series calibration methods.

The SEDAR 61 assessment concluded that the Gulf red grouper stock is not overfished and overfishing is not occurring, but that as of 2017, the stock remained below the spawning stock biomass (SSB) at 30 percent of the spawning potential ratio (SPR), where SPR is the ratio of SSB to its unfished state. Based on the results of SEDAR 61, the Council's SSC recommended an overfishing limit (OFL) of 5.35 million lb (2.43 million kg) and an acceptable biological catch (ABC) of 4.90 million lb (2.22 million kg). Because these catch levels are in MRIP-FES units, the recommended ABC appears to be larger than the current total ACL of 4.16 million lb (1.89 million kg), but would actually result in a decrease in allowable harvest when compared to the 5.26 million lb (2.39 million kg) MRIP-FES equivalent. In addition, these catch level recommendations assumed status quo sector allocations for red grouper, which were based in part on 1986-2005 landings estimates generated by MRFSS. As explained in Amendment 53, retaining the current allocation would increase the commercial ACL but substantially decrease the recreational ACL when comparing like units. Therefore, the Council requested that the SSC review alternative catch level projections based on sector allocation alternatives that used MRIP-FES data and several time series (1986-2005, 1986-2009, and 1986-2018). The SSC reviewed these alternative sector allocation scenarios, affirmed that the

SEDAR 61 (2019) assessment, which included MRIP-FES recreational landings, represented the best scientific information available, and provided alternative catch level recommendations based on the allocation alternatives.

The commercial-recreational allocation impacts the catch level projections produced by the assessment. As more of the total ACL is allocated to the recreational sector, the proportion of recreational discards increases.

Recreational discard mortality rates are assumed to be less than commercial discard mortality rates but the magnitude of recreational discards is considerably greater than commercial discards. Generally, a fish caught and released by a recreational fishermen has a greater likelihood of survival than by a commercial fishermen because of how and where they fish. However, because of the much higher numbers of red grouper that are released by the recreational sector vs the commercial sector, the total number of discards that die from the recreational fishing exceeds those from the commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which means a lower OFL, ABC, and total ACL. However, this is not due to any change in how the recreational sector prosecutes the fishery but occurs because MRIP-FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of

discarding fish.

In Amendment 53, the Council considered several allocation alternatives: maintaining the current allocation, maintaining the current commercial ACL and allocating the remaining pounds to the recreational sector, and using the various time series reviewed by the SSC to adjust the allocation to reflect the most recent understanding of historical landings. The Council decided to adjust the allocation using the same years used to set the current allocation in Amendment 30B to the FMP (1986-2005). The Council determined that this would best represent the historic landings for the years used in Amendment 30B while accounting for the change from MRFSS data to MRIP-FES data. Because the MRIP-FES landings estimates are greater than the previous estimates of recreational landings estimates, the commercial-recreational allocation would shift from 76 percent and 24 percent, respectively, to 59.3 percent and 40.7 percent, respectively. Based on the results of SEDAR 61 and using the proposed allocation of 59.3 percent commercial and 40.7 percent recreational, the Council's SSC recommended an OFL of 4.66 million lb (2.11 million kg) and an ABC of 4.26 million lb (1.93 million kg). The total ACL is equal to the ABC.

Management Measures Contained in This Proposed Rule

If implemented, this proposed rule would revise the

sector ACLs and ACTs for the Gulf red grouper stock.

Annual Catch Limits and Annual Catch Targets

The current commercial ACL and ACT are 3.16 million lb (1.43 million kg) and 3.00 million lb (1.36 million kg), respectively. The current recreational ACL and ACT are 1.00 million lb (0.45 million kg) and 0.92 million lb (0.42 million kg) in MRIP CHTS units, respectively. In MRIP FES units, the current recreational ACL and ACT are estimated to be 2.10 million lb (0.95 million kg) and 1.93 million lb (0.88 million kg), respectively.

As explained previously, the ABC associated with the preferred allocation is 4.26 million lb (1.93 million kg) and the total ACL is equal to the ABC. Applying the allocation selected by the Council in Amendment 53 to the total ACL results in a 2.53 million lb (1.15 million kg) commercial ACL and a 1.73 million lb (0.78 million kg) recreational ACL in MRIP FES units.

The Council did not apply the ACL/ACT Control Rule to set the commercial buffer between the ACL and ACT. Normally, a sector managed using an IFQ program without a commercial quota overage during its reference period (as was the case for the reference period 2016-2019) would yield a 0 percent buffer from the control rule. Instead, in Amendment 53, the Council decided to continue using a buffer of 5 percent between the commercial ACL and ACT to allow red grouper and gag share categories in the IFQ

program to have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag multi-use allocation, and vice versa. Applying the 5 percent buffer to the proposed commercial ACL of 2.53 million lb (1.15 million kg) yields a commercial ACT of 2.40 million lb (1.09 million kg).

The Council did apply the ACL/ACT Control Rule to set the recreational sector buffer between the ACL and ACT. Using 2016-2019 MRIP FES landings data in the control rule produced a buffer of 9 percent, one percentage point greater than the current buffer. Applying this 9 percent buffer to the proposed recreational ACL of 1.73 million lb (0.78 million kg) generated a recreational ACT of 1.57 million lb (0.71 million kg) in MRIP FES units.

Minority Report

A minority report signed by four Council members raises several objections to the preferred allocation in Amendment 53, including allegations that the preferred allocation violates several provisions of the Magnuson-Stevens Act. These issues were also raised in public comments on the draft environmental impact statement, which is integrated into Amendment 53. Responses to those comments are included in Appendix J of Amendment 53. Consistent with those responses, NMFS has determined that the proposed rule is consistent with the relevant provisions of the Magnuson-Stevens Act. Any final rule will

respond to comments on the proposed rule received by NMFS during the comment period, as well as the issues raised in the Council's minority report.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 53, the Reef Fish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are

contained in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The objective of this proposed rule is to use the best scientific information available to establish Gulf red grouper sector allocations, ACLs, and ACTs, thereby ensuring that the sector ACLs accurately reflect the commercial and recreational sectors' historical participation and the recreational ACL is consistent with data used to monitor recreational landings and trigger AMS. All monetary estimates in the following analysis are in 2019 dollars.

Amendment 53 would revise the sector allocations of the total ACL for Gulf red grouper from 76 percent for the commercial sector and 24 percent for the recreational sector to 59.3 percent for the commercial sector and 40.7 percent for the recreational sector. The current OFL, ABC, and total ACL are 14.16 million lb (6.42 million kg), 13.92 million lb (6.31 million kg), and 4.16 million lb (1.89 million kg), respectively. The recreational portion of these values are based on MRIP-CHTS data. Amendment 53 would change the OFL and ABC to 4.66 million lb (2.11 million kg) and 4.26 million lb (1.93 million kg), consistent with the results of the most recent stock assessment and the recommendations of the Council's SSC, and would set the total ACL equal to the ABC of 4.26

million lb (1.93 million kg). The recreational portion of these values are based on MRIP-FES data. Applying the new sector allocations would reduce the commercial ACL from 3.16 million lb (1.43 million kg) to 2.53 million lb (1.15 million kg) and the recreational ACL from 2.10 million lb (0.95 million kg) in MRIP-FES units, or 1.00 million lb (0.45 million kg) in MRIP-CHTS units, to 1.73 million lb (0.78 million kg) in MRIP-FES units. This proposed rule and Amendment 53 would retain the current 5 percent buffer between the commercial ACL and ACT (quota), resulting in a reduction of the commercial ACT (quota) from 3.00 million lb (1.36 million kg) to 2.40 million lb (1.09 million kg). However, it would increase the buffer between the recreational ACL and ACT from 8 percent to 9 percent, and thereby reduce the recreational ACT from 1.59 million lb (0.72 million kg) to 1.57 million lb (0.71 million kg) given the proposed reduction in the recreational ACL. As a result, this proposed rule is expected to directly regulate commercial fishing businesses that possess Gulf red grouper shares in the grouper-tilefish IFQ program and for-hire fishing businesses that target red grouper.

The commercial red grouper quota is allocated annually based on the percentage of red grouper shares in each IFQ account (e.g., if an account possesses 1 percent of the red grouper shares and the commercial quota is 1.00 million lb (0.45 million kg), then that account would receive 10,000

lb (4,536 kg) of commercial red grouper quota). Although it is common for a single IFQ account with red grouper shares to be held by a single business, some businesses have multiple IFQ accounts with red grouper shares. As of February 19, 2020, 495 IFQ accounts held red grouper shares. These accounts and red grouper shares were owned by 436 businesses. Thus, it is assumed this proposed rule would directly regulate 436 commercial fishing businesses.

A valid charter-headboat (for-hire) Gulf reef fish vessel permit is required to legally harvest red grouper in the Gulf. NMFS does not possess complete ownership data regarding businesses that hold charter-headboat (for-hire) Gulf reef fish vessel permits, and thus potentially harvest red grouper. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, it is assumed each for-hire vessel is independently owned by a single business, which is expected to result in an overestimate of the actual number of for-hire fishing businesses directly regulated by this proposed rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest Gulf red grouper in a given year. However, in 2019, there were 1,277 vessels with valid charter-headboat Gulf reef fish vessel permits. Of these 1,277 vessels, 90 vessels are used primarily for commercial

fishing purposes and thus are not considered for-hire fishing businesses in this analysis. Further, Gulf red grouper is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,277 vessels with valid charter-headboat Gulf reef fish vessel permits, 799 were homeported in Florida. Of these permitted vessels, 60 are primarily used for commercial fishing rather than for-hire fishing purposes and thus are not considered for-hire fishing businesses. In addition, 48 of these permitted vessels are considered headboats. Headboats take a relatively large, diverse set of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species. Therefore, it is assumed that no headboat trips would be canceled, and thus no headboats would be directly affected as a result of this proposed rule. However, charter vessels often target red grouper. Of the 799 vessels with valid charter-headboat Gulf reef fish vessel permits that are homeported in Florida, 691 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with valid charter-headboat permits in the Gulf were active in 2017 (*i.e.*, 24 percent were not fishing). A charter vessel would only be directly regulated by this proposed rule if it is fishing. Given this information, our best estimate of the number of charter vessels that are likely to harvest Gulf red grouper in a given year is 525, and thus this proposed

rule is estimated to directly regulate 525 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide. NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2014 through 2018, the maximum annual gross revenue earned by a single vessel was about \$2.39 million, which occurred in 2015. The average gross revenue per vessel was about \$143,000 in that year. By 2018, the maximum and average gross revenue per vessel had decreased to about \$1.04 million and \$96,000, respectively. Based on this

information, all commercial fishing businesses directly regulated by this proposed rule are determined to be small entities for the purpose of this analysis.

For other industries, the Small Business Administration has established size standards for all major industry sectors in the U.S., including for-hire businesses (NAICS code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses directly regulated by this proposed rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this proposed rule to directly regulate 436 of the 532 businesses with IFQ accounts, or approximately 82 percent of those commercial fishing businesses. Further, NMFS expects this proposed rule to directly regulate 525 of the 1,187 for-hire fishing

businesses valid charter/headboat permits in the Gulf reef fish fishery, or approximately 44 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all directly regulated commercial and for-hire fishing businesses are small entities. Based on this information, NMFS expects the proposed rule to affect a substantial number of small entities.

Because revenue and cost data are not collected for the commercial fishing businesses that are expected to be directly regulated by this proposed rule, direct estimates of their economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly. Further, the 436 commercial fishing businesses that own red grouper shares, and therefore receive red grouper quota at the beginning of each calendar year, also own shares and receive quota in the other IFQ share categories *i.e.*, red snapper, gag, shallow-water grouper, deep-water grouper, and tilefish. These businesses earn economic profits because of their ownership of these shares as well their red grouper shares. However, economic profits are only realized if the quota allocated to these businesses with shares is actually used for harvesting purposes (*i.e.*, no economic profits will accrue unless the quota results in the production and sale of seafood). Because the average

annual commercial landings of red grouper from 2014-2018 and the proposed red grouper commercial quota are almost identical, NMFS assumes that all of the red grouper commercial quota will be harvested in the foreseeable future. Similarly, because practically all of the commercial red snapper quota has been used for harvesting in recent years, NMFS assumes that all of the commercial red snapper quota allocated to these businesses will be harvested in the foreseeable future. However, based on 2015-2019 data, NMFS expects that only 84 percent of the deep-water grouper commercial quota, 50 percent of the gag commercial quota, 35 percent of the shallow-water grouper commercial quota, and 78 percent of the tilefish commercial quota allocated to these businesses will be used for harvesting in the foreseeable future. Given these quota utilization rates in combination with average annual allocation prices in 2019 and annual commercial quotas in 2020 by share category, total economic profits for commercial fishing businesses with red grouper shares are estimated to be at least \$18.61 million. This estimate does not account for any economic profits that may accrue to commercial fishing businesses that own red grouper shares from the harvest of non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 85 percent of commercial IFQ vessels' average annual gross revenue, and economic profits from the harvest

of non-IFQ species tend to be much smaller than those from IFQ species. Given that there are 436 commercial fishing businesses that own red grouper shares, the average annual expected economic profit per commercial fishing business is at least \$42,700.

However, most of these economic profits (82 percent) are the result of owning red snapper shares. Only approximately \$1.77 million (or 9.5 percent) of their economic profits are due to the ownership of red grouper shares. This proposed rule is only expected to affect economic profits from the ownership of red grouper shares. Specifically, the action that proposes to reduce the OFL, ABC, total ACL, and the commercial sector allocation of the total ACL results in a reduction of the red grouper commercial ACL from 3.16 million lb (1.43 million kg) to 2.53 million lb (1.15 million kg) and the commercial red grouper ACT (quota) from 3.00 million lb (1.36 million kg) to 2.40 million lb (1.09 million kg). Given an annual allocation price of \$.59/lb in 2019 for red grouper, this reduction in the commercial red grouper quota is expected to reduce economic profits to these commercial fishing businesses by \$354,000, or about \$812 per business. Thus, economic profit is expected to be reduced by no more than 1.9 percent on average per commercial fishing business.

Based on the most recent information available, average annual profit is \$26,514 per charter vessel. The

action that modifies the sector allocations, OFL, ABC, and total ACL results in a reduction of the red grouper recreational ACL from 2.10 million lb (0.95 million kg) in MRIP-FES units to 1.73 million lb (0.78 million kg) in MRIP-FES units. The ACL reduction is expected to reduce the recreational season length by 12 days, and thereby cause the number of trips targeting red grouper on charter vessels to decrease by 665 angler trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler trip by charter vessels. CFpA on charter vessels is estimated to be \$141 per angler trip. Thus, NMFS expects the estimated reduction in charter vessel profits from this action to be \$93,723, or \$179 per vessel.

The action that proposes to increase the buffer between the recreational ACL and recreational ACT from 8 percent to 9 percent would decrease the recreational ACT from 1.59 million lb (0.72 million kg) to 1.57 million lb (0.71 million kg). The ACT reduction is only germane if the recreational sector exceeds its ACL in the future, as that would trigger the post-season AM, causing the recreational sector to be constrained to the recreational ACT rather than the recreational ACL. Average annual landings in the recreational sector from 2016 through 2019 are greater than the proposed recreational ACL, and so it is possible that the post-season AM may be triggered, causing the recreational sector, including the for-hire component, to

be constrained to the ACT. If the post-season AM is triggered, the additional reduction in the recreational season length caused by this action is estimated to be 4 days, which NMFS expects to cause the number of trips targeting red grouper on charter vessels to decrease by an additional 204 angler trips. Thus, if the post-season AM is triggered, NMFS estimates that the reduction in charter vessel profits would be \$28,764, or \$55 per vessel.

Based on the above, NMFS expects the total reduction in profits for charter vessels from this proposed rule to be no more than \$122,487, or \$234 per charter vessel. Thus, profit would potentially be reduced by approximately 0.9 percent on average per for-hire fishing business.

Five alternatives, including the status quo, were considered for the proposed action to set the sector allocations for red grouper at 59.3 percent for the commercial sector and 40.7 percent for the recreational sector, and set the OFL, ABC, total ACL, commercial ACL, and recreational ACL at 4.66 million lb (2.11 million kg), 4.26 million lb (1.93 million kg), 4.26 million lb (1.93 million kg), 2.53 million lb (1.15 million kg), and 1.73 million lb (0.78 million kg) in MRIP-FES units, respectively. The status quo alternative would have maintained the current sector allocations for red grouper at 76 percent for the commercial sector and 24 percent for the recreational sector, and maintained the OFL, ABC, total

ACL, commercial ACL, and recreational ACL of 14.16 million lb (6.42 million kg), 13.92 million lb (6.31 million kg), 4.16 million lb (1.89 million kg), 3.16 million lb (1.43 million kg), and 1.00 million lb (0.45 million kg) in MRIP-CHTS units, respectively. In general, the status quo alternative was not selected because it is not based on the best scientific information available. More specifically, the status quo alternative would continue to use estimates based on MRIP-CHTS data rather than MRIP-FES data for the recreational sector, even though MRIP-FES data have been determined to be the best scientific information available for estimating and monitoring landings and effort in the recreational sector. The status quo alternative would have also set OFL and ABC above the values produced by the most recent stock assessment and recommended by the Council's SSC.

A second alternative would have maintained the current sector allocations for red grouper at 76 percent for the commercial sector and 24 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 5.35 million lb (2.43 million kg), 4.90 million lb (2.22 million kg), 4.90 million lb (2.22 million kg), 3.72 million lb (1.69 million kg), and 1.18 million lb (0.54 million kg) in MRIP-FES units, respectively. This alternative was not selected as it would have resulted in considerably lower net economic benefits

to the Nation compared to the proposed action. In addition, because of the conversion from MRIP-CHTS to MRIP-FES, the second alternative would have also effectively resulted in a significant reallocation of the total ACL from the recreational sector to the commercial sector, thereby causing a much larger, adverse proportional effect on the recreational sector relative to the commercial sector compared to the proposed action, which was not considered to be fair and equitable.

A third alternative would have set the sector allocations for red grouper at 68.7 percent for the commercial sector and 31.3 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 5.03 million lb (2.28 million kg), 4.60 million lb (2.09 million kg), 4.60 million lb (2.09 million kg), 3.16 million lb (1.43 million kg), and 1.44 million lb (0.65 million kg) in MRIP-FES units, respectively. Similar to the second alternative, the third alternative was not selected as it would have resulted in considerably lower net economic benefits to the Nation compared to the proposed action. Further, the third alternative would have maintained the current commercial ACL despite the required reduction in the total ACL. While this would have resulted in no effects on the commercial sector, it would have also resulted in a reallocation of the total ACL from the recreational sector to the

commercial sector and thereby caused large adverse effects on the recreational sector compared to the proposed action, which was not considered to be fair and equitable.

A fourth alternative would have set the sector allocations for red grouper at 60.5 percent for the commercial sector and 39.5 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 4.70 million lb (2.13 million kg), 4.30 million lb (1.95 million kg), 4.30 million lb (1.95 million kg), 2.60 million lb (1.18 million kg), and 1.70 million lb (0.77 million kg) in MRIP-FES units, respectively. A fifth alternative would have set the sector allocations for red grouper at 59.7 percent for the commercial sector and 40.3 percent for the recreational sector, and resulted in an OFL, ABC, total ACL, commercial ACL, and recreational ACL of 4.67 million lb (2.12 million kg), 4.28 million lb (1.94 million kg), 4.28 million lb (1.94 million kg), 2.56 million lb (1.16 million kg), and 1.72 million lb (0.78 million kg) in MRIP-FES units, respectively. The fourth and fifth alternatives were not selected because they did not use the same time series of years as the original sector allocation and therefore would not as accurately reflect the historical participation of the recreational and commercial sectors in the fishery, which is contrary to the Council's objectives. These alternatives were also not selected as they resulted in

slightly lower net economic benefits to the Nation compared to the proposed action.

Two alternatives, including the status quo, were considered for the proposed action to maintain the buffer between the commercial ACL and commercial ACT of 5 percent and increase the buffer between the recreational ACL and recreational ACT from 8 percent to 9 percent. The status quo alternative would have maintained the buffer between the commercial ACL and commercial ACT of 5 percent and maintained the buffer between the recreational ACL and recreational ACT of 8 percent. The status quo alternative was not selected because the current recreational buffer is based on MRFSS data, which are no longer used for quota monitoring because they are no longer the best scientific information available.

The second alternative would have reduced the commercial buffer from 5 percent to 0 percent and increased the recreational buffer from 8 percent to 9 percent. Both the red grouper and gag share categories in the commercial grouper-tilefish IFQ program have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and a portion of the gag quota to be harvested under the red grouper allocation. Each year, the program assigns a portion of each shareholder's red grouper and gag's allocations to the multi-use allocation category. The intent of the multi-use

provision is to provide for allocation if either gag or red grouper are landed as incidental catch. The second alternative was not selected because, based on recent data, the gag multi-use allocation would be zero. As a result, red grouper could not be landed with gag allocation, which is contrary to the purpose of the multi-use provision in the grouper-tilefish IFQ program.

List of Subjects in 50 CFR Part 622

Annual catch limit, Fisheries, Fishing, Gulf, Red grouper, Reef fish.

Dated: January 10, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper* - 2.40 million lb (1.09 million kg).

* * * * *

3. In § 622.41, revise the last sentence of paragraph (e)(1) and revise paragraph (e)(2)(iv) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(1) * * * The commercial ACL for red grouper, in gutted weight, is 2.53 million lb (1.15 million kg).

(2) * * *

(iv) The recreational ACL for red grouper, in gutted weight, is 1.73 million lb (0.78 million kg). The recreational ACT for red grouper, in gutted weight, is 1.57 million lb (0.71 million kg).

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